

PJS:DBS:jm

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

In Re:	:	
	:	
EXCEL STORAGE PRODUCTS, L.P.	:	Chapter 7
	:	
Debtor.	:	Bankruptcy No.: 5-10-07862
	:	
<hr/>		
UNITED STATES OF AMERICA	:	
(Federal Prison Industries, UNICOR)	:	
	:	
Movant	:	
V.	:	
	:	
EXCEL STORAGE PRODUCTS, L.P.	:	

**MOTION OF UNICOR TO MODIFY STAY TO  
AUTHORIZE TERMINATION OF CONTRACT WITH DEBTOR**

The United States of America, on behalf of Federal Prison Industries, trade name UNICOR, a party in interest and governmental unit, files this motion to modify the automatic stay and to authorize the termination of a contract with debtor, Excel Storage Products, L.P., and avers as follows:

1. UNICOR moves for an order modifying the stay to authorize it to terminate a contract between it and Debtor for cause due to Debtor's failure to perform under the contract and inability to provide adequate protection that it can perform in the future or cure the current default.

2. This Court has jurisdiction of this contested matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 362, and Fed. R. Bankr. P. 4001. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(G). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Petitioning Creditor, Recycling and General Industrial Local 108 filed an involuntary Chapter 11 petition, Case No. 5:10-bk-782-RNO, against Debtor, Excel Storage Products, L.P., on September 27, 2010.

4. On October 1, 2010, Debtor, Excel Storage Products, L.P., filed a motion to convert Case No. 5:10-bk-782-RNO to a Chapter 7 under 11 U.S.C. § 1112(b).

5. Also on October 1, 2010, Debtor, Excel Storage Products, L.P., filed a voluntary Chapter 7 petition. The voluntary Chapter 7 petition was assigned Case No. 5:10-bk-8141-RNO.

6. On October 12, 2010, Case No. 5:10-bk-782-RNO and Case No. 5:10-bk-8141-RNO were consolidated to a voluntary Chapter 7 case, deemed filed on September 27, 2010, under case number 5:10-bk-782-RNO.

7. William G. Schwab was appointed as the Bankruptcy Trustee in this Chapter 7 case. The Trustee is represented by William G. Schwab and Associates.

8. Federal Prison Industries, trade name UNICOR, is a wholly owned government corporation incorporated in the District of Columbia under 18 U.S.C. § 4121. UNICOR provides goods and services to government agencies by utilizing production facilities operated at various correctional institutions administered by the Federal Bureau of Prisons, an agency of the Department of Justice. UNICOR provides federal prison inmates with employment, education, and training opportunities to manufacture products for sale. 18 U.S.C. § 4122.

9. UNICOR entered into a five year contract (Contract No. DJU4600002983, Exhibit 1) with Lodi Metal Tech on September 27, 2007, with the goal of providing cantilever parts that UNICOR would then assemble and provide to its own customers. The contract required Lodi to provide the following items: cantilever uprights and arms, horizontal braces, crossbars, spacers, frames, and engineering calculations. *See* Ex. 1.

10. Contract No. DJU4600002983 provided that UNICOR would order items via individual delivery orders over the five year contract. This was a multiple award requirements contract pursuant to Federal Acquisition Regulation 16.503, wherein UNICOR agreed to order all of its requirements for the contract items from Lodi or two other listed vendors, but made no guarantee as to the exact amount UNICOR would order. UNICOR provided estimates quantities as to the

amounts of each of the items it would order. The contract expires on September 27, 2012. *See* Ex. 1.

11. In September of 2009, Debtor, Excel Storage Products, L.P., purchased Lodi Metal Tech and agreed to assume Lodi's contract obligations, including the UNICOR contract.

12. On May 19, 2010, UNICOR Contracting Officer Kirk Kennedy placed two delivery orders. Delivery Order No. DJU4500390410 (Exhibit 2) requested 8,976 orange cantilever arms for a total dollar value of \$322,740.32, initially due July 1, 2010 and modified to September 30, 2010. Delivery Order No. DJU4500390411 (Exhibit 3) requested 1,494 gray cantilever uprights for a total dollar value of \$844,767.36, also initially due July 1, 2010 and modified to September 30, 2010.

13. On March 22, 2010, UNICOR Contracting Officer Kennedy placed Delivery Order No. DJU4500386390 (Exhibit 4), amended on July 1, 2010 to include eight line items, which were due at various dates throughout the summer and fall of 2010.

14. Delivery Order No. DJU4500386390 line items one through four were delivered. Line item five—a request for 920 uprights—due on September 7, 2010 has not been fulfilled. Ex. 4.

15. On October 5, 2010, Contracting Officer Kennedy faxed delinquency notices concerning the missed delivery deadlines to Excel's normal point of contact. Exhibit 5.

16. UNICOR needs the equipment ordered on Delivery Order Nos. DJU4500390410 (Ex. 2), DJU4500390411 (Ex. 3), and DJU4500386390 (Ex. 4) to fulfill contracts with the Department of Defense to provide storage racks for the Tracy Center in California and with the Air Force to provide storage racks for the Robins Air Force Base in Georgia.

17. Debtor has defaulted on the UNICOR delivery orders and has provided no assurances that future performance under its contract with UNICOR will be forthcoming. *See* Ex. 5.

18. Debtor has stated that it has terminated all its employees and cannot provide protection for its remaining assets. *See* Motion for Expedited Hearing on Alleged Debtor's Emergency Motion to Shorten and Limit Notice, Enter Order for Relief, and Convert Case to a Proceeding Under Chapter 7 (Docket No. 11).

19. Debtor has also stated that it cannot continue in business and is unable to fulfill the responsibilities of a debtor-in-possession under Chapter 7. *See Id.*

20. Contracts, if property of the bankruptcy estate, are classified as executory contracts that can usually be assumed or rejected by the trustee for the debtor. *See* 11 U.S.C. § 365(a).

21. Bankruptcy Code § 365(c) prohibits the trustee from assuming or assigning executory contracts if applicable law excuses the other party from accepting performance from any entity other than the debtor if the other party does not consent to the assumption or assignment.

22. The Assignment of Claims Act, 41 U.S.C. § 15(a) prohibits the assignment of a government contract by a contractor, to any other party, unless the other party is a bank, trust company, or other financing institution.

23. In this case Debtor's contract with UNICOR, Contract No. DJU4600002983, is a government contract.

24. In this case, the Assignment of Claims Act, 41 U.S.C. § 15(a), would be an applicable law with respect to 11 U.S.C. § 365(c) that would preclude the trustee from assuming or assigning Debtor's contract with UNICOR. *See In re West Electronics*, 852 F.2d 79 (3d Cir. 1988).

20. In this case, UNICOR has no protection because it cannot procure a new vendor to fulfill its contract needs until the requirements contract with Debtor is terminated.

21. UNICOR has an urgent need for relief from the automatic stay, so that it may terminate its Contract No. DJU4600002983 with Debtor and procure a new vendor who can fulfill UNICOR's contract needs, otherwise UNICOR may go into default on its contracts to supply storage racking equipment to customers, and UNICOR will be unable to fill its mission of providing employment opportunities to prisoners, as well as supplying goods to other federal agencies.

WHEREFORE, UNICOR, pursuant to 11 U.S.C. § 362(d) and Rule 4001(a), respectfully seeks relief from the Bankruptcy Code's automatic stay so that it may terminate Contract No. DJU4600002983 with the Debtor.

Respectfully submitted,

PETER J. SMITH  
UNITED STATES ATTORNEY

/s/ D. Brian Simpson  
D. BRIAN SIMPSON  
Assistant U.S. Attorney  
Atty. I.D. #OH 0071431  
P.O. Box 309  
Scranton, PA 18501  
Phone (717) 221-4482  
Fax: (717) 221-2246  
E-Mail: [D.Brian.Simpson@usdoj.gov](mailto:D.Brian.Simpson@usdoj.gov)

Dated: October 26, 2010

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

In Re:	:	
	:	
EXCEL STORAGE PRODUCTS, L.P.	:	Chapter 7
	:	
Debtor.	:	Bankruptcy No.: 5-10-07862
	:	
	:	
UNITED STATES OF AMERICA	:	
(Federal Prison Industries, UNICOR)	:	
	:	
Movant	:	
V.	:	
	:	
EXCEL STORAGE PRODUCTS, L.P.	:	

**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania, and is a person of such age and discretion as to be competent to serve papers.

That on October 26, 2010, she served copies of the attached:

**MOTION OF UNICOR TO MODIFY STAY TO  
AUTHORIZE TERMINATION OF CONTRACT WITH DEBTOR**

by electronic mail to:

Gregory W. Hauswirth, Esquire  
William G. Schwab, Trustee

/s/ Jodi Matuszewski

Jodi Matuszewski  
Legal Assistant